

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER**

ORDER

Under Section 11(1), 11(4), 11(B) and 11(D) of the Securities and Exchange Board of India Act, 1992 read with Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 and SEBI (Alternative Investment Funds) Regulations, 2012 in respect of-

1. **M/s HBJ Capital Services Private Limited (PAN: AACCH3450L) and its Directors, viz. Mr. Kumar Harendra (PAN: AJSPK3749B), Ms. Amrita Singh (PAN: BDPPS4879G), Mr. Abhishek Kumar Singh (PAN: BGJPS4452C, Mr. Jitendra Kumar (PAN: AVVPJ1321K), Ms. Arunmozhi Gopalan (PAN: AIJPA0575F) and Mr. Ponnuraj Gokulraj (DIN: 06716876) and,**
2. **HBJ Capital Ventures LLP (PAN:AAFFH9963E) and its designated Partners Mr. Kumar Harendra (PAN: AJSPK3749B), Ms. Amrita Singh (PAN: BDPPS4879G).**

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1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received certain information through its Local Office, wherein it was informed that HBJ Capital Services Private Limited (hereinafter referred to as “**HBJ Capital**”) was offering trading tips and investment advice to general public through its website (www.hbjcapital.com) under various schemes. It was also stated that HBJ was offering assured returns on execution of stock tips under such schemes.
 2. On preliminary examination, it was observed that HBJ Capital had issued various advertisements in press, official websites of HBJ Capital, giving stock tips under various schemes, etc. On perusal of the said websites, HBJ Capital was seen assuring guaranteed returns on execution of stock tips.
 3. As the aforesaid information/details obtained from the aforesaid website, various advertisements, etc., *prima facie* indicated that the activities of HBJ Capital is in the nature of offering financial advisory services to the clients, SEBI vide its letter dated January 02, 2014 *inter alia* advised HBJ Capital to offer their comments in respect of the compliance with SEBI (Investment Advisers) Regulations, 2013.

4. HBJ Capital in its reply vide letter dated January 07, 2014 *inter alia* submitted as under:
 - a. *"We are mainly into the business of research and consulting in the field of equity and capital market,*
 - b. *The aforesaid consultancy services are provided to those who have subscribed to the services of the company,*
 - c. *We are engaged in the business of providing investment advices to the subscribed clients and is an 'Investment Adviser' within the meaning of SEBI (Investment Advisers) Regulations, 2013,*
 - d. *The registration under SEBI (Investment Advisers) Regulations, 2013 was not opted by them merely due to oversight and that they will, without further delay, take necessary actions and steps to get it registered with the said regulation as an investment adviser."*

5. SEBI, vide e-mail dated May 7, 2014 advised NSDL to provide the transaction details of the demat accounts held by HBJ Capital. In response, NSDL, vide letter dated May 8, 2014 provided the following details:
 - Details of two demat accounts held by HBJ Capital with Depository Participants, *viz.* ICICI Securities Ltd. and Sharekhan Ltd.,
 - Transaction statements of HBJ Capital for the period December 16, 2010 (earliest date of opening of account) to May 6, 2014,
 - *"Statement of Holdings"* as on May 6, 2014 in respect of the two demat accounts held by HBJ Capital.

6. It was also noted from the official website of HBJ Capital, that it is running a Limited Liability Partnership (LLP) structure in the name of HBJ Capital Ventures LLP (hereinafter referred to as "**HBJ Capital LLP**"). As per the details available in the website, HBJ Capital LLP is an equity investment vehicle promoted by HBJ Capital which collects funds from various persons (partners) and is administered and managed for the purpose of creating profits.

7. Thereafter, SEBI, vide letter dated August 6, 2014 *inter alia* sought the following information from HBJ Capital and HBJ Capital LLP in relation to their business activities:
 - a. The date of commencement of various services offered by the company/LLP,
 - b. Present Asset Under Management (AUM) of each of the services as on previous financial years from initiation,

- c. Break up of AUM under various asset classes,
- d. Details of clients availing various schemes offered by them, such as names, joining date, name of scheme, end date, KYC particulars etc.,
- e. Client-wise details of fund mobilized,
- f. Demat and bank accounts statements,
- g. Details of buying and selling securities.

7.1 In response, HBJ Capital, vide letter dated August 26, 2014 *inter alia* submitted as under:

- *"Though HBJ LLP is incorporated with the main object of giving investment advice could not carry the business, Neither the Company nor the LLP is in the business of Asset Management and hence, disclosure under this clause is Not Applicable. The company has not mobilized any amount from the clients,*
- *The company is not into business of asset management and hence client disclosure under this clause including KYC is not applicable. However, in case the details of clients taking Investment Advice are sought, the same shall be provided separately.*
- *Further, the HBJ has already taken necessary steps to get itself registered under SEBI(Investment Advisers) Regulations, 2013. As per HBJ it has obtained required authorisation for increasing the capital limit to meet the net worth criteria vide Ordinary Resolution passed in the Extra-ordinary General Meeting of the company held on July 21, 2014 and awaiting for necessary approval from the Registrar of Companies for further process.*
- *Company shall make application for registration under the said regulations once the company meets the eligibility criteria of net worth"*

7.2. Vide the aforesaid letter, HBJ Capital also furnished the following documents/information:

- a. Bank account details of HBJ Capital and HBJ Capital LLP,
- b. Bank account statements of HBJ Capital for the period July 1, 2014 to July 31, 2014 of Axis bank, HDFC Bank, Bank of India and ICICI Bank,
- c. Bank account statements of HBJ Capital LLP for the period June 1, 2014 to August 26, 2014 of Axis Bank and for the period June 6, 2014 to July 31, 2014 of HDFC Bank,
- d. *"DP billing Transaction Statement"* of the demat accounts held by HBJ Capital and HBJ Capital LLP maintained with Sharekhan for the period April, 1 2014 to April 30, 2014,

- e. *"Statement of Transaction cum Holding"* for the period July 1, 2014 to July 31, 2014 of the demat account held by HBJ Capital LLP with India Infoline Ltd.,
 - f. *"Statement of Accounts"* for the period April 1, 2014 to April 30, 2014 of the demat account held by HBJ Capital LLP with Edelweiss Broking Ltd.,
 - g. *"Statement of Accounts"* as on June 30, 2014 of the demat account held by HBJ Capital LLP with Angel Broking,
 - h. Details of 4 brokers with whom buy and sell order were placed by HBJ Capital and HBJ Capital LLP,
 - i. PAN Card copies of HBJ Capital and HBJ Capital LLP.
8. On perusal of the details available from the website of HBJ Capital, documents available from the ROC Portal, documents/material forwarded by HBJ Capital LLP, etc. it was observed that HBJ Capital is pooling funds from HNIs and offering Asset Management Services in the name of its group entity, *viz.* HBJ Capital LLP. In view of this, SEBI vide letter dated September 19, 2014 forwarded the details observed from the website of HBJ Capital, advising HBJ Capital LLP to offer their comments in respect of compliance with SEBI (Alternative Investment Fund) Regulations, 2012.

8.1 In reply dated September 26, 2014, the HBJ Capital LLP stated as under:

- *"We admit that HBJ Capital LLP has mentioned in its website the various services referred in the letter forwarded by SEBI. The services mentioned in the website are not carried by LLP since incorporation and subsequently the partners of LLP decided not to carry any business as such,*
 - *However, due to oversight the referred services remain mentioned in the website of LLP,*
 - *HBJ Capital LLP is in the process of closing in accordance with Limited Liability Act, 2008,*
 - *We hereby undertake to bring the necessary changes in the website of LLP immediately and further undertake that no such services will be offered without obtaining necessary approvals from appropriate authorities including SEBI".*
9. Thereafter, SEBI via separate e-mails dated November 20, 2014 requested NSE and BSE to furnish the trading details of HBJ Capital and HBJ Capital LLP and also to provide the trade log data of the transactions carried out by them, if any.

9.1 BSE and NSE via e-mails dated November 24, 2014 and November 25, 2014 respectively furnished the following documents/information:

- Details of HBJ Capital as authorised person of India Infoline Ltd.,
- Details of HBJ Capital as a client of 2 stock brokers of BSE and 8 stock brokers of NSE,
- Trading details of HBJ Capital (in NSE) as a client for the period December 22, 2010 to May 07, 2014 in both cash and F& O Segments.

9.2 BSE also furnished the KYC details of HBJ Capital received from the trading member Sharekhan Ltd.

10. Subsequent to this, SEBI received several complaints *inter alia* alleging that they had subscribed to the various services/schemes offered by HBJ Capital, which offered huge returns. However, the company failed to provide the returns they promised and also failed to refund the money invested by the complainants.

11. I have carefully perused the complaints received by SEBI, correspondence exchanged between SEBI and HBJ Capital/ HBJ Capital LLP along with the documents/information contained therein, information/documents obtained from the MCA Website, ROC portal and the website of HBJ Capital, details received from NSDL, BSE and NSE and other material available on record. The issues for determination in the instant matter are as under:

- a. Whether HBJ Capital and its directors are providing *Investment Advisory Services* to their clients/investors, without obtaining registration from SEBI, in violation of the SEBI (Investment Advisers) Regulations, 2013 and,
- b. Whether HBJ Capital and its directors through its group entity, *viz.* HBJ Capital LLP is pooling funds from HNIs with an objective of generating profits from investments made in the securities market, without obtaining registration from SEBI, in violation of SEBI (Alternative Investment Funds) Regulations, 2012.

11.1 In respect of the issue whether HBJ Capital and its directors are providing *Investment Advisory Services* to their clients/investors, without obtaining registration from SEBI, in violation of the

SEBI (Investment Advisers) Regulations, 2013, it is *prima facie* observed from the aforesaid material available on record that:

- i. HBJ Capital Pvt. Ltd. (CIN:U65999KA2010PTC052350) was incorporated on February 02, 2010. It's registered address is No. 912, 1st F Main Road, Giri Nagar, 2nd Phase, Banashankri 3rd Stage, Bangalore - 560085. Mr. Kumar Harendra, Mrs. Amrita Singh, Abhishek Kumar Singh, Jitendra Kumar and Arunmozhi Gopalan were the directors of HBJ Capital.
- ii. HBJ Capital through the websites, viz. www.hbjcapital.com; www.hbjcapital.co.in www.stoplosstrade.in is offering various services such as:
 - i. Investments
 - ii. Trading
 - iii. Institutional Services
 - iv. Asset management Services
- iii. Following are noted from the website of HBJ Capital:

Under the head "*Investment Services*", HBJ Capital is found to be offering following services:

- a. **Hedge Fund Portfolio:** *This is an Offline Hedge Fund Advisory Service wherein, the users are required to replicate the fund moves as imitated by the research team of HBJ Capital. The investors just need to copy the transactions as done in the Fund on their scale of Investment (HBJ Hedge Fund model corpus is 25 Lakh Rs). Clients would receive immediate updates on the changes in the Portfolio through Mail/ SMS & Web-Login, so that they can replicate the same on their Portfolios. This advisory model provides clients with an efficient way of Investing in Hedge funds. Expected returns is > 25% CAGR.*
- b. **Multibagger:** *The HBJ Capital is seen to be offering three schemes under this category. As per the scheme details available on its websites, tips are given to users on monthly basis which are Multibagger Stocks, i.e. the HBJ Capital claims that an investment in the above category of stocks generates return of 3 to 10 times in a period of 3-5 years. The users are offered the above service for fees ranging from Rs. 15,000/- to 35,000/- for a span of one year to three years.*

- c. **Bulls Eye:** *The HBJ Capital under the above scheme is found to offer 10 positional calls in a calendar year promising returns of 30-40% on each of the calls. The users are offered the above service for various fees ranging from Rs. 15,000/- to 70,000/- for a span of six months to three years.*
- d. **The Millionaire Portfolio:** *The HBJ Capital under this scheme is offering its users newsletters on monthly basis promising returns of 5-10% year on year to users who replicate the model portfolio of HBJ Capital's Portfolio Management. The users are offered the above service for fees ranging from Rs. 25,000/- to 60,000/- for a span of one year to three years.*
- e. **Fortuna:** *In this category of service, as claimed by HBJ on its website, the "fortuna" offers a combination of "advisory+ Multibagger + Millionaire+ Customised wealth Management." This scheme is offered to users having equity portfolio value or capital of investment over 25 lakhs promising returns of 5-10% year on year by a strong research team monitoring the portfolio of users. The above service is offered for various fees ranging from Rs. 50,000/- to 1,00,000/- for a span of one year to three years.*
- iv. The website also indicates that HBJ Capital offers trading services. Following are observed under the head "**Trading Services**"
- (a) *Intraday Plans,*
- (b) *Positional Plans.*
- Under these categories of service the HBJ Capital is offering stock tips in both segments *i.e.* cash and derivatives. Further, the frequency of calls/recommendation vary from segment to segment. For instance, an investor opting for intraday cash, the recommendation frequency is 2 calls per day. Similarly, an investor opting for "*Option portfolio*" under "*Positional Plans*" the recommendation frequency is 1 Nifty and stock option call per week.
- v. The website also states "*HBJ Capital has a strong, un-cluttered research process. We are used to analyzing companies on which very little research has been published and where getting data for analysis is tough. Our nimble research process allows us to collect data and process it in uncanny ways*".
- vi. From the aforesaid details displayed in their website, it is observed that the users/investors are advised by HBJ Capital to imitate the transactions based on the updates/stock tips provided

through Mail, SMS, web-login etc. It is also observed that depending on the plan opted by investors, recommendation calls are made by HBJ Capital for giving tips to them. Similarly, HBJ Capital is found offering services of stock tips through newsletters and to various categories of investors under other schemes. As per the content of the website, HBJ Capital offers assured returns on execution of such stock tips and requires users/subscribers/investors to pay variable fees depending on the scheme and tenure of the subscription.

- vii. On perusal of the bank account statements of HBJ Capital, it is observed that there is regular flow of funds in the said bank accounts from various individuals in various denominations ranging from Rs. 1500/- to Rs.1,00,000/-. As per the information/details provided by NSDL, it is observed that HBJ Capital had carried out various transactions through certain trading members during 2011 to 2012. Further, it is also noted that HBJ Capital was registered as an authorised person with India Infoline Ltd. in BSE and NSE from September 06, 2013 and September 04, 2013 respectively.
- viii. It is also relevant to note that HBJ Capital in its reply vide letter dated January 7, 2014 admitted that they are engaged in the business of providing investment advice to their clients and is an '*Investment Adviser*' within the meaning of SEBI (Investment Advisers) Regulations, 2013 and that they have taken necessary steps to get itself registered under SEBI(Investment Advisers) Regulations, 2013. As per the submissions made by HBJ Capital, it has obtained required authorisation for increasing the capital limit to meet the net worth criteria prescribed by the Investment Advisers Regulations, 2013, vide Ordinary Resolution passed in the Extraordinary General Meeting of the company held on July 21, 2014.
- ix. In the light of the aforesaid observations and analysis, it is evident that the activities of HBJ Capital and its directors (as detailed in paragraph No. 11.1 (i) to (vii) above), of giving trading tips, stock specific recommendations, etc. to the investors clearly indicate that they are engaged in providing investment advisory services to investors on payment of fees, which *prima facie* fall under the definition of "*investment adviser*" as defined by Regulation 2(m) of the Investment Advisers Regulations, which reads as under:

"investment adviser" means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called;"

- x. As per the extant legal provisions, any entity carrying out the activities of a market intermediary should be registered with SEBI and conducts its activities as per the provisions of Section 12(1) the SEBI Act, which reads as under:

*"No stock-broker, sub- broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, **investment adviser** and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act."*

- xi. Further, as per Regulation 3(1) of the Investment Advisers Regulations, the registration of the investment advisers is mandatory. It provides as under:

"On and from the commencement of these regulations, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from the Board under these regulations:

Provided that a person acting as an investment adviser immediately before the commencement of these regulations may continue to do so for a period of six months from such commencement or, if it has made an application for a certificate under sub regulation (2) within the said period of six months, till the disposal of such application."

- xii. Considering the facts and circumstances of the matter, it is very evident that the activities of HBJ Capital and its directors of giving trading tips, stock specific recommendations, etc. to the investors on a contractual basis on payment of fees falls within the definition of activities of "investment adviser" as defined under Regulation 2(m) of the SEBI Investment Advisers Regulations. HBJ Capital and its aforementioned directors are engaged in providing investment advisory services to investors without obtaining necessary registration for the same as mandated by Section 12 (1) of the SEBI Act and Regulation 3(1) of the SEBI Investment Advisers Regulations.

11.2 In respect of the second issue under determination whether HBJ Capital and its directors through its group entity, *viz.* HBJ Capital LLP is carrying out activities of "*Alternative Investment Fund*" by pooling funds from HNIs with an objective of generating profits from investments made in the securities market, without obtaining registration from SEBI, in violation of SEBI (Alternative Investment Funds) Regulations, 2012, it is *prima facie* observed from the aforesaid material available on record as under:

- i. As per the MCA Portal, HBJ Capital Ventures LLP (LLP Identification Number (LLPIN) AAA-2982) is a limited liability partnership formed by HBJ Capital. It was incorporated in the year December 2010. The registered address is No. 912, 1st F Main Road, 2nd Phase Giri Nagar, Near to Sai Baba Temple, Bangalore - 560085. HBJ capital LLP has 10 partners and 2 designated partners, *viz.* Mr. Kumar Harendra and Ms. Amrita Singh.
- ii. In respect of the activities of HBJ Capital LLP, it is observed that the website of HBJ Capital was also seen offering "*Asset Management Services*" (as noted in the forgoing paragraphs), in the name of its group entity HBJ Capital Ventures LLP. Following are noted from the website, www.hbjcapital.com in respect of business activities of HBJ Capital LLP:
 - "*HBJ Capital Ventures LLP is a equity investment vehicle promoted by HBJ Capital which will act on the similar lines of Buffet Partnership firm/ Pabrai Funds by accepting funds from HNI partners and investing in listed/unlisted equities. Our simple profit share model is inspired from these funds*".
 - *HBJ LLP offers partners the best way to profit from the India growth story and the growing importance of the Indian equity markets over the next decade with the least frictional costs through its simple profit sharing mechanism,*
 - *Partners of HBJ LLP are bestowed with various value added services from HBJ Capital in addition to the wealth created from investments and becoming a part of our growth journey,*
 - *HBJ LLP aims to act in the most transparent manner with strong disclosures and regular newsletters to partners. It also aims to create wealth for partners by overcoming the problems faced by individual retail investors.*

- *HBJ Capital Ventures LLP has been conceived on the lines of Buffet Partnership and Pabrai funds. The important thing to note is that both these fund managers had the confidence on their stock picking and did not go for the usual fund management fee model. Buffet almost re-invested all his profits into the LLP, thus over a period of time making him the largest partner in his partnership*
 - *LLP will run a concentrated portfolio of 10-12 stocks where we have strong conviction and in the businesses which we understand. The same ensures greater returns and also helps keep a tab and maintain strategic partnership with the portfolio companies. We will also take into consideration sectoral composition, concentration risks etc. HBJ Capital LLP works in the above structure with three principal fund principals who source ideas from 6 research analysts"*
- iii. As per the details portrayed on its website, HBJ Capital LLP claims to be an equity investment vehicle promoted by HBJ Capital. It is also noted that HBJ Capital LLP accepts funds from partners/investors and invests in listed/unlisted equities. In its Vision statement, HBJ Capital LLP has stated as below:
- *"Our vision is to generate wealth for our partners through alpha investing, where the reward is much more than the risk taken.*
 - *We aim to outperform the market returns significantly over the long term. We hope to create a strong platform for retail investors to invest in equities and create wealth.*
 - *We wish to overcome the short comings of retail investors like emotions in investing, no professional support, no time to analyze companies/markets, not being able to follow up on investments, converse with managements etc.*
 - *We aim to run a very concentrated portfolio of 10-12 stocks where our conviction level is high and which meets our internal standards of assessment.*
 - *Biggest requirements to make money in markets is not intelligence, it is emotional control. While an individual investor has several emotional urges, in HBJ LLP we have a set of processes which helps us to tide over irrational decisions and maintain the investment discipline.*
 - *We also have the flexibility to invest across sectors, market caps, themes which restrict mutual funds and we also have better control of the flow of funds, thus earning better returns."*

- iv. HBJ Capital LLP imposes following restrictions on its partners/investors subscribing to their scheme:
- *"The investments would be locked in for a period of minimum one year*
 - *New partners/investors cannot be added once the fund closes.*
 - *Annual redemptions are allowed subject to Hurdle Rate of 6% and HBJ Capital will deduct 25% of the profits gained by other partners/investors.*
 - *The funds would be raised as and when appropriate and First right would be given to the existing partners/investors on the basis of latest NAV.*
 - *No managerial remuneration would be paid to any partner/investor and*
 - *Existing partners/investors can increase their funds only during fund raising process".*
- v. Further, as per the "vision statement" (mentioned in their website of HBJ Capital LLP), which *inter alia* states *"..generating wealth for their partners through alpha investing"*, HBJ Capital LLP claims that the reward is much more than the risk taken. The HBJ Capital LLP has also claimed that it runs a very concentrated portfolio of 10-12 stocks where their conviction level is high and meets their internal standards of assessment. The HBJ Capital LLP has promised the investors that they have the flexibility to invest across sectors, market caps, themes which restrict mutual funds and they are also having better control of the flow of funds, thus earning better returns. It is also noted from the website that HBJ Capital is a partner in HBJ Capital LLP and has contributed an amount of Rs. 50 lakhs in the LLP.
- vi. On analysing the documents downloaded from ROC Portal, it is noted that HBJ Capital LLP (which is registered as LLP having 12 partners including 2 designated partners) has total obligation of contribution of around Rs. 4 crores. It is seen from the incorporation documents such as subscriber's list filed with ROC that the subscribers have agreed to contribute the money or property etc. in accordance with the LLP agreement. It is also noted that certain subscribers have resolved to invest Rs. 25 lakhs.

It is noted that the HBJ Capital LLP has executed a number of trades from 2011 till March, 2014, investing large amounts in the securities market. As per the data furnished by BSE and NSE via e-mail dated November 24, 2014 and November 25, 2014 respectively, HBJ Capital has registered itself as an authorised person through India Infoline Ltd. (Stock Broker of both BSE and NSE), and has carried out transactions on behalf of HBJ Capital LLP.

According to the data furnished by the stock exchanges HBJ Capital LLP has carried out transactions on Stock Exchange platforms from 2011 to March, 2014 through various Stock Brokers such as India Infoline Ltd., Sharekhan, Angel Broking and Edelweiss Broking. It is also learnt from the bank statements of HBJ Capital LLP (of Axis Bank and HDFC Bank) submitted by HBJ Capital vide letter dated August 26, 2014 that some of the partners mentioned in the subscriber's list, have credited amounts ranging between Rs.20 to 25 lakhs to the account of HBJ Capital LLP. Similarly, payments are released to said partners through the same account. The statement of the said investment by partners as observed from the bank statements of Axis Bank and HDFC Bank are given below:

Sl. No.	Date of Transaction	Name of the partner	Amount Debited from bank account of HBJ Capital LLP (in Rs)	Amount credited to bank account of HBJ Capital LLP (in Rs.)
1	03/06/2014	Satyanarayana V.M	25,00,000/-	
2	03/06/2014	T N Parthasarat	50,00,000/-	
3	03/06/2014	Satyanarayana V.M		25,00,000/-
4	09/06/2014	Srinivas Nagar		20,00,000/-
5	10/06/2014	Manish Bharat G	50,00,000/-	
6	11/06/2014	Satyanarayana V .M	25,00,000/-	
7	20/06/2014	Kumar Harendra	10,00,000/-	

- vii. The aforesaid details of trades and bank transactions executed by HBJ Capital LLP leads to the inescapable conclusion that HBJ Capital LLP is continuing its activity of pooling funds from investors/partners and investing the same in securities market for the benefit of its investors/partners.
- viii. In the facts and circumstances, as explained in the forgoing paragraphs, wherein the HBJ Capital LLP has invited investments through its website to pool investments from public subject to certain defined investment strategies (such as lock in period of one year, restricting partners after closure of funds, restrictions on existing partners to raise investments during fund raising only, runs a very concentrated portfolio of 10-12 stocks where their conviction level is high and meets their internal standards of assessment, collection of 25% fund fee and 6% hurdle rate on invested amount and non payment of managerial remuneration to partners, etc.), I am of the opinion that HBJ Capital LLP has created a limited liability partnership

structure to pool and manage private funds from HNI/partners based on a defined investment policy/strategy for the benefit of its investors/partners.

- ix. In the light of the aforesaid observations and analysis, it is evident that the activities of the equity investment vehicle promoted by HBJ Capital, *viz.* HBJ Capital LLP (as detailed in paragraph No. 11.2 (i) to (viii) above), of pooling funds from HNI partners/investors and investing in listed/unlisted equities in accordance with a defined investment policy for the benefit of its investors/partners, clearly indicate that they are running a scheme, which *prima facie* falls under the definition of "*Alternative Investment Fund*" as defined by Regulation 2(1) (b) of the SEBI(Alternative Investment Funds) Regulations, 2012, which is defined as follows:

"Alternative Investment Fund" means any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which,-

- (i) is a privately pooled investment vehicle which collects funds from investors, whether Indian or foreign, for investing it in accordance with a defined investment policy for the benefit of its investors; and*
- (ii) is not covered under the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 or any other regulations of the Board to regulate fund management activities:*

- x. As has been quoted in the forgoing Paragraph No. 11.1 (x), Section 12(1) the SEBI Act mandated that any intermediary who is associated with securities market should be registered with SEBI and conducts its activities as per the provisions of the regulations made under the SEBI Act.
- xi. As per Regulation 3 (1) of the SEBI Alternative Investment Funds Regulations, 2012, the registration of an entity is mandatory for acting as an "*Alternative Investment Fund*". Regulation 3(1) states "*On and from the commencement of these regulations, no entity or person shall act as an Alternative Investment Fund unless it has obtained a certificate of registration from the Board.*
- Provided** that an existing fund falling within the definition of Alternative Investment Fund which is not registered with the Board may continue to operate for a period of six months from commencement of these regulations or if it has made an application for registration under sub-regulation (5) within the said period of six months, till the disposal of such application*
- Provided** further that the Board may, in special cases, extend the said period up to a maximum of twelve months from the date of such commencement "*

Further Regulation 3(4) states "*Any entity referred to in sub-regulation (1) fails to make application for grant of a certificate within the period specified therein shall cease to carry on any activity as an Alternative Investment Fund*".

- xii. Considering the facts and circumstances of the matter, it is very evident that the activities HBJ Capital LLP and its partners, of pooling funds from HNIs/partners/investors for investing in the securities market in accordance with a defined investment policy falls within the definition of "*Alternative Investment Funds*" as defined under Regulation 2(1)(b) of the SEBI(Alternative Investment Funds) Regulations, 2012. HBJ Capital LLP and its partners are continuing to act as an "*Alternative Investment Fund*" without obtaining necessary registration for the same as mandated by Section 12 (1) of the SEBI Act read with Regulation 3 of the Alternative Investment Funds Regulations, 2012.
12. I, therefore *prima facie* find that the following entities have been acting as "*Investment Advisers*" and "*Alternative Investment Advisers*" without obtaining registration from SEBI to act as such and, thereby, have violated Section 12(1) of the SEBI Act, 1992 read with provisions of Regulation 3 (1) of the SEBI (Investment Advisers) Regulations, 2013 and Regulation 3 of SEBI (Alternative Investment Funds) Regulations, 2012:
- i. M/s. HBJ Capital Services Pvt. Ltd. and its promoters/directors are Mr. Kumar Harendra, Ms. Amrita Singh, Mr. Abhishek Kumar Singh, Mr. Jitendra Kumar, Ms. Arunmozhi Gopalan and Mr. Ponnuraj Gokulraj,
 - ii. HBJ Capital Ventures LLP and its designated partners Mr. Kumar Harendra, Ms. Amrita Singh.
13. SEBI (Investment Advisers) Regulations, 2013 *inter alia* provide the framework for regulating the activity of entities who are in the business of providing investment advice in respect of securities and investment products. Similarly, SEBI (Alternative Investment Advisers) Regulations, 2012 *inter alia* provide the framework for regulating the activity of entities who are acting as "*Alternative Investment Funds*". These Regulations seek to create a standardized operating structure within which these entities will operate and also make them duly accountable for their investment advices and investment activities by requiring them to comply with the criteria, set out in the relevant provisions of the aforesaid Regulations. In view of this, subjecting such intermediaries to the statutory requirement of

registration with SEBI is imperative for the protection of interests of investors and to safeguard the integrity of securities market.

In the instant case, HBJ Capital and its directors and HBJ Capital LLP and its partners/directors have acted as investment advisers and alternative investment funds without obtaining registration from SEBI. It is also relevant to note that several complaints have been received against HBJ Capital alleging that HBJ Capital failed to provide the services promised by it and also failed to provide the returns promised. It was also alleged that HBJ Capital is not refunding the money invested by the investors/clients. In view of this, it is apprehended that investors at large could be misled and the moneys invested by the investors are at risk on account of such unauthorized activities of unregistered entities.

13.1 SEBI has been entrusted with the duty to protect the interests of investors and protect the integrity of the securities market. Considering the facts and circumstances of the present matter and on the basis of *prima facie* findings, it is necessary to intervene in this matter to take immediate steps to prevent such persons from engaging further clients. This is also a case where, effective and expeditious action is required to be taken to prevent any possible harm to investors caused by the unauthorized activities of the aforementioned entities and its Directors/Partners.

14. In view of the above, I, in exercise of the powers conferred upon me by virtue of Section 19 read with Sections 11(1), 11B and 11D of the SEBI Act, by way of this ad-interim ex-parte order hereby direct M/s. HBJ Capital Services Pvt. Ltd. (PAN No.AACCH3450L) and its Directors *viz.* Mr. Kumar Harendra (PAN: AJSPK3749B), Ms. Amrita Singh (PAN:BDPPS4879G), Mr. Abhishek Kumar Singh (PAN: BGJPS4452C, Mr. Jitendra Kumar (PAN:AVVPJ1321K), Ms. Arunmozhi Gopalan (PAN:AIJPA0575F) and Mr. Ponnuraj Gokulraj (DIN:06716876) and HBJ Capital Ventures LLP (PAN:AAFFH9963E) and its designated partners *viz.* Mr. Kumar Harendra (PAN: AJSPK3749B) and Ms. Amrita Singh (PAN:BDPPS4879G) to:

- i. cease and desist from acting as an Investment Adviser and Alternative Investment Fund and cease to solicit or undertake such activities or any other unregistered activities in the securities market directly or indirectly, any manner whatsoever;*
- ii. immediately withdraw and remove all advertisements, representations, Literatures, brochures, materials, publications, documents, websites, etc. in relation to those schemes/activities (investment adviser and Alternative Investment Fund) or any unregistered activity in the securities market,*

- iii. *not to divert any funds raised from investors, kept in bank account(s) and/or in the custody of HBJ Capital or its directors and HBJ Capital LLP and its designated partners;*
- iv. *furnish all the information sought by SEBI, vide letter dated August 6, 2014 including,*
- a) *the details of various services offered by the company/LLP,*
 - b) *present Asset Under Management (AUM) of each of the services offered by HBJ Capital LLP from the date of initiation,*
 - c) *break up of AUM under various asset classes,*
 - d) *details of clients availing various schemes offered by them, such as names, joining date, name of scheme, end date, KYC particulars etc.,*
 - e) *client-wise details of fund mobilized,*
 - f) *demat accounts statements of HBJ Capital and HBJ Capital LLP.*
- v. *furnish copies of LLP agreements,*
- vi. *provide PAN No of Mr. Ponnuraj Gokulraj.*
15. The above directions are without prejudice to the right of SEBI to take any other action that may be initiated against M/s. HBJ Capital Services Pvt. Ltd., HBJ Capital Ventures LLP and its aforementioned Directors/partners in accordance with law.
16. This Order shall be treated as a show cause notice and M/s. HBJ Capital Services Pvt. Ltd. and HBJ Capital Ventures LLP and its aforementioned Directors/partners may show cause as to, why the investment plans and existing schemes identified in this Order should not be held as "*Investment Advisory Services*" and "*Alternative Investment Fund*" in terms of respective Regulations and why appropriate directions, under Section 11 and 11B of the SEBI Act, 1992 and relevant SEBI Rules/Regulations including directions, prohibiting them from buying, selling or otherwise dealing in securities market, either directly or indirectly, in any manner whatsoever, for a particular period and to refund the amount collected from the investors/clients/partners for its existing schemes should not be issued against them.
17. M/s. HBJ Capital Services Pvt. Ltd. and HBJ Capital Ventures LLP and its aforementioned Directors/partners shall within 15 days from the date of receipt of this Order, file their objections/reply, if any, to this Order. They may also indicate, in such reply, if they wish to avail an opportunity of personal hearing in the matter.

18. This order shall come into force with immediate effect and the directions issued hereinabove shall continue till further orders.

Date: June 15, 2015
Place: Mumbai

S RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA